

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Thomas Juliano	Team: Squad #13	CCRB Case #: 201801340	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 02/19/2018 12:00 PM	Location of Incident: § 87(2)(b)	Precinct: 42	18 Mo. SOL 8/19/2019	EO SOL 8/19/2019	
Date/Time CV Reported Tue, 02/20/2018 9:34 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 02/20/2018 9:34 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Diogenes Hernandez	29422	935013	042 PCT
2. SGT Aneudys Burgos	01857	948715	042 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Fu Chen	09658	957450	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Diogenes Hernandez	Abuse: Police Officer Diogenes Hernandez threatened to arrest § 87(2)(b)	§ 87(2)(b)
B.SGT Aneudys Burgos	Abuse: Sergeant Aneudys Burgos threatened to arrest § 87(2)(b)	§ 87(2)(b)

Case Summary

On February 19, 2018, § 87(2)(b) filed this complaint with the CCRB over the phone.

On February 19, 2018, § 87(2)(b) went to his newly purchased multi-residential apartment building located at § 87(2)(b) to change the front door lock, which led to the building's common area, with PO Diogenes Hernandez and PO Fu Chen of the 42nd Precinct. § 87(2)(b) who resides in the building, stood in front of the lock and refused to allow § 87(2)(b) to change the front door lock even though § 87(2)(b) was being provided with a copy of the key. PO Hernandez told § 87(2)(b) that if he did not allow § 87(2)(b) to change the lock that he would be arrested. (**Allegation A: Abuse of Authority, § 87(2)(g)**). Sgt. Aneudys Burgos of the 42nd Precinct told § 87(2)(b) that if he changed the locks back that he would be arrested (**Allegation B: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) was not arrested as a result of this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Diogenes Hernandez threatened to arrest

§ 87(2)(b)

Allegation (B) Abuse of Authority: Sergeant Aneudys Burgos threatened to arrest

§ 87(2)(b)

It is undisputed that § 87(2)(b) squats in the apartment located at § 87(2)(b) and that he has lived in the apartment for four years without paying rent or signing a lease. It is undisputed that § 87(2)(b) was attempting to change the lock to the front door of the apartment building which led to the common area. It is undisputed that § 87(2)(b) did not attempt to change the lock to § 87(2)(b)'s apartment. It is further undisputed that § 87(2)(b) provided § 87(2)(b) with a copy of the key to the new lock.

§ 87(2)(b) and his wife, § 87(2)(b) were consistent in their statements and both stated that § 87(2)(b) came to the building and had a deed to the building, which § 87(2)(b) believed was fabricated. § 87(2)(b) showed the deed to PO Hernandez and PO Chen. PO Hernandez then told § 87(2)(b) that he needed to let § 87(2)(b) change the lock to the front door to the common area. § 87(2)(b) told PO Hernandez that the documents were bad and that he looked up the building at a court house and that § 87(2)(b) was not listed as the owner. PO Hernandez told § 87(2)(b) again that he had to allow § 87(2)(b) to change the locks to the common area. § 87(2)(b)'s locksmith then attempted to change the locks; however, § 87(2)(b) stood in front of the door and blocked it. PO Hernandez grabbed § 87(2)(b)'s right upper-arm sleeve and pulled him aside. § 87(2)(b) did not fall nor was he injured by this action. PO Hernandez then told § 87(2)(b) that if he did not allow § 87(2)(b) locksmith to change the lock that he would be arrested. The locksmith changed the lock and § 87(2)(b) gave § 87(2)(b) a copy of the key to the new lock on the front door. § 87(2)(b) stated that he was going to change the locks back, and Sgt. Burgos stated that if he did so, that he would be arrested. Although § 87(2)(b) had a key to the new lock, he wanted to change the locks back to the old locks as he felt that § 87(2)(b) was not the real owner, that he fabricated the documents, and that he was aggressive, and therefore he did not want him to have access to the building.

§ 87(2)(b) stated that he purchased § 87(2)(b) at a foreclosure auction and was advised by his attorney that he was allowed to change the locks to the common areas of the building. § 87(2)(b) provided documentation proving that his company, “§ 87(2)(b),” owns the building located at § 87(2)(b) (**Board Review 1**). § 87(2)(b) also submitted documentation proving that he is the owner of the business “§ 87(2)(b)” (**Board Review 2**).

PO Hernandez stated that he did not tell § 87(2)(b) that he would be arrested if he continued to block the door and prevent the lock from being changed. After the locks were changed PO Hernandez did explain to § 87(2)(b) that he could be arrested if he damaged the lock or took the lock out of the door. PO Hernandez stated that § 87(2)(b) could have been arrested for criminal mischief if he damaged the lock or petit larceny if he took the lock from the door. PO Hernandez stated this to § 87(2)(b) because § 87(2)(b) was uncooperative and was preventing the landlord from changing the locks. PO Hernandez made this statement because he wanted to warn § 87(2)(b) about what could happen. He stated that sometimes people will do what they want to do and he does not look to lock people up, and wanted § 87(2)(b) to understand the situation. PO Hernandez did not observe § 87(2)(b) do anything that he could have been arrested for.

Sgt. Burgos stated that he told § 87(2)(b) that harassment was a violation, and explained that he could be arrested for harassing § 87(2)(b) in front of the officers. Sgt. Burgos explained that § 87(2)(b) harassed § 87(2)(b) by talking back, by telling him to get out of the building and that telling him that he did not belong in the building, and by using his body to prevent § 87(2)(b) from changing the locks to the front door. PO Hernandez did not recall if § 87(2)(b) could be arrested for anything else.

New York State Penal Law section 145.00 states that a person is guilty of criminal mischief in the fourth degree when, having no right to do so nor any reasonable ground to believe that he or she has such a right, he or she intentionally damages property of another person (**Board Review 3**)

New York State Penal Law section 155.25 states that a person is guilty of petit larceny when he or she steals property (**Board Review 3**).

§ 87(2)(g)
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party **(Board Review 4)**.
- PO Hernandez has been a member of the NYPD for thirteen years and has been a subject in one additional CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- Sgt. Burgos has been a member-of-service for seven years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This case was ineligible for mediation due to § 87(2)(b)'s plan to file a lawsuit regarding the incident.
- On March 13, 2018, an inquiry was filed with the New York City Comptroller's Office to locate a notice of claim for § 87(2)(b). Results are pending. **(Board Review 5)**.
- § 87(2)(b), § 87(2)(g)

Squad No.: 13

Investigator:	_____	Inv. Thomas Juliano	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date